

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. Ch. 151

Re: Town of Milton (Sewer Project)

Land Use Permit Amendment
#4C0046-7A-EB, [Docket #841]

CHAIR'S PROPOSED DISMISSAL ORDER

The Town of Colchester filed an appeal from an amendment to the Town of Milton's land use permit for a sewer project, and the Conservation Law Foundation filed a cross-appeal. Both parties now seek to withdraw their appeals. As set forth below, the Chair grants these motions and dismisses the appeal and cross-appeal.

I. Procedural History

On December 2, 2003, the District 4 Environmental Commission issued Land Use Permit Amendment #4C0046-7A (Amended Permit) and accompanying Memorandum to the Town of Milton. The Amended Permit modifies the Town of Milton's permit for a wastewater treatment facility by adding four conditions pertaining to extension of the town's collection system to the Catamount Industrial Park owned by the Greater Burlington Industrial Corporation and to a residential subdivision development known as Pettybrook Estates, located east of U.S. Route 7, requiring the Town to initiate a comprehensive planning process for the Route 7 sewer service corridor between the Checkerberry area and the Colchester town line, and prohibiting further sewer connections in Service Areas 6 and 7, west of Interstate 89, until the comprehensive planning process has been completed (Amended Project).

On January 2, 2004, the Town of Colchester (Appellant) filed an appeal with the Environmental Board (Board) from the Amended Permit alleging that the Commission erred in its conclusions with respect to Environmental Board Rule 2(A)(1)(d), compliance with Rule 34, 34(C) and failure to notify them regarding the Settlement Agreement between the Town of Milton and the Conservation Law Foundation.

On January 13, 2004, the Conservation Law Foundation (CLF) filed a cross-appeal.

On January 14, 2004, Appellant filed a Motion to Withdraw its appeal. CLF filed its Motion to Withdraw on January 20, 2004.

II. Discussion

Appellant and CLF seek to withdraw their appeals so the Commission can provide all parties notice and an opportunity to be heard on the amendment. The Board has discretion to deny a request to withdraw if such withdrawal would prejudice any party or the public interest the Board is charged to protect. *Re: Green Mountain Railroad, #2W0038-3B-EB, Findings of Fact, Conclusions of Law, and Order at 7-8 (Mar. 22, 2002)(citing Jones v. Securities Exch. Comm'n, 298 U.S. 1, 21(1936))*. In this case, there is no indication that any party or the

public interest in environmental protection will be harmed by dismissing these appeals and letting the parties commence amendment proceedings at the Commission. Accordingly, dismissal is appropriate.

The Chair is authorized by EBR 16(B) to make preliminary rulings on procedural matters as are necessary to expedite and facilitate the hearing process. Any such ruling may be objected to by any interested party. EBR 16(B). Should any party object to the Chair's ruling, it shall be reviewed and the matter resolved by the board. *Id.* Should no timely objection be filed, the Chair's ruling is final.

III. Order

1. The Town of Colchester's Motion to Withdraw is GRANTED and the Town of Colchester's appeal is DISMISSED.
2. Conservation Law Foundation's Motion to Withdraw is GRANTED and Conservation Law Foundation's cross-appeal is DISMISSED.
3. Jurisdiction is returned to the District 4 Environmental Commission.
4. Any objection to this Order shall be filed on or before **Monday, January 26, 2004.**

DATED at Montpelier, Vermont this 20th day of January, 2004.

ENVIRONMENTAL BOARD

/s/Patricia Moulton Powden
Patricia Moulton Powden, Chair